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**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

PLANNING COMMISSION

MEETING DATE August 27, 2015	CONTACT/PHONE Kerry Brown, Project Manager 805-781-5713 kbrown@co.slo.ca.us	APPLICANT MWF Properties LLC/McDonalds	FILE NO. DRC2012-00099
SUBJECT Hearing to consider an appeal by Julie Tacker of the Planning Director's determination that a change in tenancy (from McDonald's to Starbucks) is in substantial conformance with Minor Use Permit DRC2012-00099. DRC2012-00099 was approved by the Board of Supervisors on April 8, 2014 and authorized a change of use from an office (former Bank of America) to a restaurant; in an existing building of 3,978 square feet (3,078 square foot to restaurant and 900 square foot remaining office space). The restaurant was authorized to use the existing drive-thru, and included other modifications to the interior and exterior of the existing building. The project is located on the north side of Los Osos Valley Road, approximately 280 feet (east) of 10 th Street at 1076 Los Osos Valley Road, in the community of Los Osos, in the Estero planning area.			
RECOMMENDED ACTION Deny the appeal based on the findings listed in Exhibit A.			
ENVIRONMENTAL DETERMINATION The requested action is not considered a project under the California Environmental Quality Act (CEQA).			
LAND USE CATEGORY Commercial Retail	COMBINING DESIGNATION Archaeologically Sensitive, Local Coastal Plan	ASSESSOR PARCEL NUMBER 074-301-018	SUPERVISOR DISTRICT(S) 2
PLANNING AREA STANDARDS: On-site Wastewater Disposal and Drainage			
LAND USE ORDINANCE STANDARDS: Appeal of Planning Department decisions			
EXISTING USES: Vacant building (previous use was a bank)			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Commercial Retail/ retail uses <i>East:</i> Commercial Retail/ retail uses <i>South:</i> Commercial Retail/ retail uses <i>West:</i> Commercial Retail/ retail uses			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

PROJECT HISTORY

Minor Use Permit DRC2012-00099 was approved by the Board of Supervisors on April 8, 2014. The Minor Use Permit allowed a change of use from an office (former Bank of America) to a restaurant (proposed McDonalds); in an existing building of 3,978 square feet (3,078 square foot restaurant and 900 square foot remaining office space). The project, a fast food restaurant with a drive through, was first considered by the Planning Commission on February 6, 2014. The Planning Commission approved the project on February 6, 2015, however due to community concerns including queuing and traffic circulation, the Planning Commission did not include the drive through component.

The applicant appealed the approval, more specifically, the condition to prohibit the drive through, to the Board of Supervisors. The Board of Supervisors considered the appeal on April 8, 2014. In order to address the concerns regarding queuing and traffic circulation in the shopping center, the applicant submitted a revised site plan with a modified drive through configuration at the Board of Supervisors hearing. The Board of Supervisors upheld the appeal, and allowed the project to proceed with the revised drive through design.

On April 14, 2015, the agent for the shopping center requested to make changes to the approved project through the Planning and Building Department's substantial conformance process. The applicant requested modifications to the drive through and tenancy changes (from a McDonald's to a Starbucks and a sandwich shop). The Planning and Building Department reviewed the proposed changes and found that the modifications proposed for the drive through configuration were not in substantial conformance with the previous project approval.

On May 20, 2015 the applicant again requested to make changes to the approved project through the Planning and Building Department's substantial conformance process. The applicant requested tenancy changes (from a McDonald's to a Starbucks and a sandwich shop), including a drive through configuration consistent with the design presented by the applicant at the Board of Supervisors hearing. The Planning and Building Department reviewed the proposed changes and found that a portion of the tenancy change was in substantial conformance, specifically, the tenancy change to a Starbucks. The Planning and Building Department did not allow the proposed tenancy change to include the sandwich shop due to water usage estimates. A letter of substantial conformance was issued by the Planning Department on June 12, 2015.

APPEAL

Julie Tacker appealed the Planning and Building Department's determination of substantial conformance on June 26, 2015 questioning the applicant submitted inaccurate information.

Appeal Issue #1 Applicants' request for Substantial Conformity falsely asserts a 1250 gallon per day approval.

Staff Response: Initial information provided by the applicant specified that the new McDonald's (previous proposed use) would use 1250 gallons per day. The County's Initial Study and Planning Commission staff report both were based on 1250 gallons per day water usage. At the Planning Commission hearing, the applicant provided a corrected water usage number based on a six month average following a remodel at the Morro Bay's McDonalds of 980 gallons per day (reducing the gallons per day per seat). The Planning Commission accepted the revised figures. The applicant proposed to modify the mitigation measure (to reduce the retrofit requirement); however the Planning Commission wanted to increase the ratio of retrofitting required and kept the condition of approval as it was proposed in order to accomplish this higher ratio, condition of approval #8 includes:

Prior to issuance of building permits, the applicant shall retrofit (outside of the prohibition zone) enough homes, businesses, etc. plumbing fixtures to offset their water demand by a total of 698 gallons per day. The applicant may provide an alternative offset as approved by the Planning Director.

The applicants submitted a substantial conformance request based on the 1250 gallons per day water number. The applicants' substantial conformance request was to allow a 2,000 square foot Starbucks with drive through and 1,078 square foot remaining food use/office space. The applicant provided water bills for three Starbucks (two located in San Luis Obispo with no drive through and one located in Santa Maria with a drive through). The Department of Planning and Building used an average of all three Starbucks to determine the water usage for the new Starbucks, which was 860 gallons per day. The applicant also provided water bills for a Subway in Pismo Beach which averaged 477 gallons per day. With both uses the total estimated water usage would be 1338 gallons per day. This number exceeded the estimated water usage for the McDonalds, therefore the Department of Planning and Building only found the Starbucks tenancy change in substantial conformance with the previous approval. Although the applicant used the 1250 gallons per day number, Planning staff did not base the substantial conformance determination on the 1250 gallons per day. Based on the submitted information, the change in tenancy from a McDonalds to a Starbucks is consistent with water usage information presented to and accepted by the Board of Supervisors and is in substantial conformance with the project approved by the Board.

Appeal Issue 2: The appellant contends that the Planning Director's determination that the Starbucks project substantially conforms to the approved McDonalds project (approved April 8, 2014), is based on the misrepresentation of condition of approval #8, and that the 2,000 square foot remainder space must remain vacant.

Staff Response: Condition of approval #8 states:

Prior to issuance of building permits, the applicant shall retrofit (outside of the prohibition zone) enough homes, businesses, etc. plumbing fixtures to offset their water demand by a total of 698 gallons per day. The applicant may provide an alternative offset as approved by the Planning Director.

Planning staff disagrees with the appellant's contention that the Starbucks project does not substantially conform to the approved McDonalds project and that the 2,000 square foot remainder space must remain vacant. The proposed Starbucks will use less water than the previously approved McDonald's and therefore substantially conforms to the previous approval. While the substantial conformance letter did not allow a sandwich shop (Subway) in the 2,000 square foot remainder space due to water concerns, the applicant /property owner may propose other uses within the 2,000 square foot remainder. Any subsequent use proposal for that space would be evaluated for conformance with the approved project and could be authorized, provided they do not use more than 120 gallons per day (980 gpd – 860 gpd = 120 gpd).

CONCLUSION

The Planning Commission should deny Ms. Tackers appeal because the proposed Starbucks uses less water than the previously approved use (McDonald's) and therefore this change in tenancy substantially conforms to the previous approval.

ATTACHMENTS

1. Findings
2. Substantial Conformance Determination dated 5/20/15 with attachments
3. Additional information provided by the applicant dated 6/2/15
4. Planning Department's Substantial Conformance determination dated 6/12/15
5. Appeal letter dated 6/26/15
6. Graphics
7. Board of Supervisors Resolution with findings and conditions of approval

Staff report prepared by Kerry Brown and reviewed by Steve McMasters.